



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
brian@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 09 2019

May 6, 2019

Robert Lemke, Vice President and Legally
Responsible Person
Eddie Madrigal, Inventory Manager and Duly
Authorized Representative
Saroyan Lumber Company, Inc.
6230 Alameda St.
Huntington Park, CA 90255

VIA FIRST CLASS MAIL

John Saroyan
(Registered Agent for Service of Process
for Saroyan Lumber Company, Inc.)
6230 S Alameda Street
Huntington Park, CA 90255

Saroyan Lumber Co., Inc.
6230 Alameda St.
Huntington Park, CA 90255

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Mr. Lemke and Mr. Madrigal:

I am writing on behalf of Los Angeles Waterkeeper ("LAW") in regard to violations of the Clean Water Act (the "Act") that LAW believes are occurring at the Saroyan Lumber Company, Inc. ("Saroyan Lumber") industrial facility located 6230 Alameda Street in Huntington Park, California (the "Facility"). This letter is being sent to Saroyan Lumber Co., Inc., Robert Lemke, and Eddie Madrigal as the responsible owners or operators of the Facility (all recipients are hereinafter referred to as "Saroyan Lumber").

This letter addresses Saroyan Lumber's unlawful discharge of pollutants from the Facility into the Los Angeles River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ as renewed by Order No. 2015-0057-DWQ ("General Permit"). This letter notifies Saroyan Lumber of ongoing violations of the substantive and procedural requirements of the General Permit at the Facility.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33

U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, LAW hereby places Saroyan Lumber on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, LAW intends to file suit in federal court against Saroyan Lumber under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. The Facility.

On August 21, 2017, Saroyan Lumber filed its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). The Waste Discharger Identification Number (“WDID”) for the Facility listed on documents submitted to the State Board is 4 19I027318. In the NOI, Saroyan Lumber certifies that the Facility is classified under SIC code 2421 (“Sawmills and Planing Mills, General”). The Facility collects storm water from its 6.5-acre industrial site and discharges storm water from at least one discharge location at the Facility. Based on information and belief, storm water discharged from the Facility flows into channels that empty into Reach 2 of the Los Angeles River, which flows into Reach 1 of the Los Angeles River and ultimately flows to the Pacific Ocean via the Los Angeles River Estuary and San Pedro Bay.

B. Water Quality Standards, Guidelines, and Numeric Action Levels.

The Regional Board has identified beneficial uses of the Los Angeles River, the Los Angeles River Estuary, and the San Pedro Bay and established water quality standards for these waters in the “Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties”, generally referred to as the “Basin Plan.” See https://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.html.

The beneficial uses of these waters include, among others, commercial and sport fishing, estuarine habitat, marine habitat, wildlife habitat, rare, threatened, or endangered species, migration of aquatic organisms, and spawning, reproduction, and/or early development, water contact recreation, and noncontact water recreation. The noncontact water recreation use is defined as “Uses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at 2-2. Contact recreation includes swimming,

wading, water-skiing, skin and scuba diving, surfing, whitewater activities, fishing, and uses of natural hot springs. *Id.*

The Basin Plan includes a narrative biostimulatory substance standard which states, “Waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth causes nuisance or adversely affects beneficial uses.” Basin Plan at 3-24. The Basin Plan contains a narrative floatables standard which states, “Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-26. The Basin Plan contains a narrative color standard which states, “Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.” *Id.* at 3-25. The Basin Plan includes a narrative oil and grease standard which states, “Waters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.” *Id.* at 3-29. The Basin Plan provides, “The pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges.” *Id.* at 3-35. The Basin Plan includes a narrative toxicity standard which states, “All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.” *Id.* at 3-38. The Basin Plan includes a narrative solid, suspended and settleable materials standard which states, “Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-37. The Basin Plan contains a Nitrogen (Nitrate, Nitrite) standard which states, “Waters shall not exceed 10 mg/L nitrogen as nitrate-nitrogen plus nitrite-nitrogen (NO₃-N+NO₂-N), 45 mg/L as nitrate (NO₃), 10 mg/L as nitrate-nitrogen (NO₃-N), or 1 mg/L as nitrite-nitrogen (NO₂-N).” *Id.* at 3-41. The Basin Plan contains a taste and odor standard that states, “Waters shall not contain taste or odor-producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible aquatic resources, cause nuisance, or adversely affect beneficial uses.” *Id.* at 3-37. The Basin Plan contains a turbidity standard that states “Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at 3-38.

The EPA has adopted freshwater numeric water quality standards for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”) and for copper 0.013 mg/L (CMC). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule).¹

The EPA 303(d) List of Water Quality Limited Segments lists Reach 2 of the Los Angeles River as impaired for trash, oil, nutrients, copper, and lead, among other pollutants. *See* https://www.waterboards.ca.gov/rwqcb5/water_issues/tmdl/impaired_waters_list/2014_int_rpt_dev/2014_2016_int_rpt/2014_2016_303d_list_w_sources.xls. Reach 1 of the Los Angeles River is impaired for zinc, lead, copper, trash, pH, nutrients, cadmium and cyanide, among other

¹ These values are expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

pollutants. The Los Angeles River Estuary is impaired for trash and sediment toxicity, among other pollutants. San Pedro Bay is impaired for sediment toxicity, among other pollutants.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).² The following benchmarks have been established for pollutants discharged by Saroyan Lumber: chemical oxygen demand (“COD”) – 120.0 mg/L; total suspended solids (“TSS”) – 100 mg/L; zinc – 0.26 mg/L; and copper – 0.0332 mg/L.

These benchmarks are reflected in the General Permit in the form of Numeric Action Levels (“NALs”). The General Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the General Permit for pollutants discharged by Saroyan Lumber: oil & grease (O&G) – 15 mg/L; zinc – 0.26 mg/L; COD – 120 mg/L; and copper – 0.0332 mg/L. The General Permit also establishes an instantaneous maximum pH NAL of less than 6.0 or greater than 9.0 s.u.

II. Alleged Violations of the Clean Water Act for Unpermitted Discharges of Pollutants

A discharger violates the Clean Water Act when it (1) discharges, i.e., adds (2) a pollutant (3) to navigable waters (4) from (5) a point source. *Comm. To Save Mokelumne River v. E. Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). Section 301(a) of the CWA mandates that, “[e]xcept as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C.A. § 1311(a). Section 1342 is the exception authorizing discharges pursuant to a NPDES permit, including the General Permit for example. 33 U.S.C. § 1342.

Saroyan Lumber has been in operation since at least the 1980s. The Clean Water Act provides that all dischargers of storm water associated with industrial activity have obtained a NPDES permit by no later than February 4, 1991. The State Board issued the initial general permit for industrial storm water discharges on November 19, 1991.

LAW is informed and believes and thereupon alleges that Saroyan Lumber did not apply for coverage under the General Permit until August 21, 2017. LAW is informed and believes and thereupon alleges that prior to August 21 2017, Saroyan Lumber’s discharges of storm water associated with industrial activities from the Facility were not subject to a NPDES permit. As a result, LAW is informed and believes and thereupon alleges that prior to August 21 2017, Saroyan Lumber’s discharges of storm water were entirely unauthorized by a NPDES permit and, as a result, did not comply with any of the General Permit’s monitoring, reporting, or pollution control requirements. These violations, including the requirement for an industrial storm water discharger to retain storm water monitoring information, records, data, and reports

² The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

required by the General Permit for at least five years, are continuing. As described throughout this notice, Saroyan Lumber is continuing to discharge storm water that is not authorized by a NPDES permit in violation of Section 301(a), 33 U.S.C. § 1311(a). Additionally, the General Permit requires that “Dischargers shall retain, for a period of at least five (5) years, either a paper or electronic copy of all storm water monitoring information, records, data, and reports required by this General Permit.” General Permit, § XXI.J.4. The current permit went into effect on July 1, 2015. As of that date, the General Permit continued the requirement from the previous version of the General Permit issued in 1997, which had the same record retention requirement: “Records of all storm water monitoring information and copies of all reports (including the Annual Reports) required by this General Permit shall be retained for a period of at least five years.” 1997 General Permit, § B.13. Numerous required records that are required to be available dating back five years to at least May 6, 2014 are not available to either the agencies or the public.

Because, on information and belief, Saroyan Lumber failed to enroll in either the 1997 or the 2015 General Permit until August 21, 2017, Saroyan Lumber violated and continues to violate the Act’s requirement that all discharges be prohibited unless authorized by a NPDES permit. Because any discharges allowed without obtaining a NPDES industrial stormwater permit resulted in the omission of numerous records regarding inspections, spills, maintenance activities, corrective actions, visual observations, sampling and analysis results, annual reports and other required records, and those omitted records and the information they were required to contain are still not available to the agencies and the public, those unpermitted pollutant discharge violations are ongoing and continuing to this day. Additionally, and as described in this notice letter, Saroyan Lumber’s discharges of industrial storm water are continuing to violate Section 301(a) of the Clean Water Act by discharging storm water that is unauthorized by a NPDES permit.

III. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit.

Saroyan Lumber has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation V(A) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. *See* General Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. General Permit, Section X(H). Conventional pollutants are total suspended solids, oil and grease, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition III(B) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition III(C) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation VI(B) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Discharge Prohibition III(D) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation VI(A) of the General Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Saroyan Lumber has discharged and continues to discharge storm water with unacceptable levels of zinc, COD, and copper in violation of the General Permit. Saroyan Lumber's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the General Permit; and are evidence of ongoing violations of Effluent Limitation V(A) of the General Permit.

Sampling / Observation Date	Parameter	Observed Concentration / Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)	Sample Taken By
01/5/2019	Zinc	2 mg/L	0.120 mg/L (CMC)		LA Waterkeeper
01/05/2019	Copper	0.052 mg/L	0.013 mg/L (CMC)		LA Waterkeeper
03/22/2018	Zinc	2.849 mg/L	0.120 mg/L (CMC)	Outfall #1	Facility
03/02/2018	Zinc	1.230 mg/L	0.120 mg/L (CMC)	Outfall #1	Facility

The information in the above table reflects data gathered from the Facility's self-monitoring during the 2017-2018 wet season. Two of the data points are from samples taken by

LAW on January 5, 2019. Saroyan Lumber failed to analyze any storm water samples from the Facility for levels of copper. LAW alleges that since at least August 21, 2017, and continuing through today, Saroyan Lumber has discharged from the Facility storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to:

- Zinc – 0.12 mg/L (CMC)
- Copper – 0.013 mg/L (CMC)

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of applicable NALs and EPA benchmarks. The following discharges of pollutants from the Facility have violated Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the General Permit and are evidence of ongoing violations of Effluent Limitation V(A) of the General Permit.

Sampling / Observation Date	Parameter	Observed Concentration / Conditions	Annual NAL/ EPA Benchmark Value /	Outfall (as identified by the Facility)	Sample Taken By
01/5/2019	Zinc	2 mg/L	0.26 mg/L		LA Waterkeeper
01/05/2019	Copper	0.052 mg/L	0.0332 mg/L		LA Waterkeeper
03/22/2018	Zinc	2.849 mg/L	0.26 mg/L	Outfall #1	Facility
03/02/2018	Zinc	1.230 mg/L	0.26 mg/L	Outfall #1	Facility
2017-2018 Reporting Year ³	Zinc	2.040 mg/L	0.26 mg/L	Outfall #1	
03/22/2018	COD	80.90 mg/L	120 mg/L	Outfall #1	Facility
03/02/2018	COD	187.00 mg/L	120 mg/L	Outfall #1	Facility
2017-2018 Reporting Year ⁴	COD	133.95 mg/L	120 mg/L	Outfall #1	

The information in the above table reflects data gathered from Saroyan Lumber's self-monitoring during the 2017-2018 wet seasons/reporting years as well as data gathered by LAW on January 5, 2019. LAW alleges that during each of those rainy seasons and continuing through today, Saroyan Lumber has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

³ This value represents the average of all zinc measurements taken at the Facility during the 2017-2018 reporting year.

⁴ This value represents the average of all COD measurements taken at the Facility during the 2017-2018 reporting year.

- Zinc – 0.26 mg/L
- Chemical Oxygen Demand (COD) – 120 mg/L
- Copper – 0.0332 mg/L

LAW's investigation, including its review of Saroyan Lumber's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards and the EPA's benchmark values, indicates that Saroyan Lumber has not implemented BAT and BCT at the Facility for its discharges of zinc, COD, copper, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. Saroyan Lumber was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Saroyan Lumber is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the General Permit. LAW alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since August 21, 2017, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which LAW alleges that Saroyan Lumber has discharged storm water containing impermissible and unauthorized levels of zinc, COD, and copper in violation of Section 301(a) of the Act as well as Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the General Permit.⁵

Further, LAW puts Saroyan Lumber on notice that General Permit Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) are each separate, independent requirements with which Saroyan Lumber must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the General Permit's Effluent Limitations, including Saroyan Lumber's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State and are evidence of the Facility's failure to implement BAT and BCT, the NALs are not effluent limitations that by themselves determine whether an industrial facility has implemented BMPs that achieve BAT/BCT.⁶

⁵ The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Los Angeles located approximately 4.5 miles from the Facility. Rain data was accessed from the National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/cdo-web/>. (Last accessed on March 15, 2019).

⁶ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the General] Permit are not, in and of themselves, violations of [the General] Permit." General Permit, Finding 63, p. 11. The NALs

The above-described unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of zinc, COD, copper, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Saroyan Lumber is subject to penalties for violations of the General Permit and the Act since August 21, 2017.

B. Failure to Develop, Implement, and/or Revise the Monitoring and Reporting Requirements for the Facility.

The General Permit requires facility operators to develop and implement an adequate Monitoring Implementation Plan for visual observations and for the sampling and analysis of storm water discharges. *See* General Permit, §§ X(I), XI. The primary objective of such monitoring is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. Adequate monitoring and reporting ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and are evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Section XI of the General Permit sets forth the monitoring and reporting requirements. As required by the General Permit, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. Additionally, all facility operators must timely submit an Annual Report for each reporting year. General Permit § XVI. The General Permit also requires Exceedance Response Actions (ERAs) in the event of any NAL exceedance, including the completion of an ERA Evaluation and ERA Report which identifies any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances. General Permit § XII.

i. Failure to Conduct Required Sampling and Analysis.

The General Permit mandates that facility operators sample four storm water discharges from all discharge locations over the course of the reporting year (two samples from July 1 to December 31 and two samples from January 1 to June 30). General Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the General Permit when they occur during facility operating hours and are preceded by 48-hours without storm water discharge. General Permit, § XI(B). A sample must be collected from each discharge point at the facility within four hours of the start of the discharge or the start of facility operations if the discharge occurs within the previous 12-hour period. General Permit, § XI(B)(5). Each sample must be analyzed for TSS, Oil & Grease, pH, additional parameters identified as likely to be

do, however, trigger reporting requirements. *See* General 2015 Permit, Section XII.

present at a facility, and additional parameters applicable based on a facility's SIC code, among others. The Facility has repeatedly violated these monitoring requirements.

a. Failure to Sample All Qualifying Events.

LAW alleges that local precipitation data shows that discharges occurred on several dates during the first half of the 2018-2019 reporting year (July 1, 2018 to December 31, 2018) on which the Facility was open, but the Facility did not collect and analyze any storm water samples. Specifically, LAW alleges that discharges occurred on the following dates, but a storm water sample was not taken at the Facility:

- October 12, 2018
- November 29, 2018
- December 6, 2018

Because Saroyan Lumber failed to collect and analyze any samples during the first half of the 2018-2019 reporting year, Saroyan Lumber has violated the General Permit's monitoring requirements.

b. Improper Sampling Conducted on a Non-Qualifying Storm Event.

On information and belief, LAW alleges that, during the second half of the 2017-2018 reporting year (January 1, 2018 to June 30, 2018), Saroyan Lumber's second sample taken on March 22, 2018 was not a legitimate Qualifying Storm Event (QSE) because it was not preceded by 48-hours with no discharge. Per the General Permit, a QSE is "a precipitation event that: a. Produces a discharge for at least one drainage area; and, b. *Is preceded by 48 hours with no discharge* from any drainage area." General Permit § XI.B.1 (emphasis added). Saroyan Lumber submitted storm water sample results taken on March 22, 2018. However, LAW alleges that, because it also rained on March 21, 2018 during the Facility's operating hours, the sample taken on March 22, 2018 was not a QSE. Because the March 22, 2018 discharge was not a QSE, Saroyan Lumber failed to collect and analyze two qualifying samples during the second half of the 2017-2018 reporting year.

LAW alleges that local precipitation data shows that qualifying discharges occurred on several dates during the second half of the 2017-2018 reporting year on which the Facility was open, but the Facility did not collect and analyze any storm water samples. Specifically, LAW alleges that discharges occurred on the following dates, but a storm water sample was not taken at the Facility:

- January 9, 2018
- March 21, 2018

Because the March 22, 2018 discharge was not a QSE, Saroyan Lumber failed to collect and analyze two qualifying samples during the second half of the 2017-2018 reporting year as required by the General Permit.

C. Failure to Complete Annual Comprehensive Facility Compliance Evaluation.

The General Permit requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation (“Annual Evaluation”) that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. General Permit, § XV. After conducting the Annual Evaluation, “[t]he Discharger shall revise the SWPPP, as appropriate, and implement the revisions within 90 days of the Annual Evaluation.” *Id.* The General Permit then requires that a Discharger submit an Annual Report which includes the date of the Annual Evaluation as well as “[a]n identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year.” General Permit § XVI.

Information available to LAW indicates that Saroyan Lumber has failed to comply with Sections XV and XVI of the General Permit. Per Section XV.F of the General Permit, the Facility’s Annual Evaluation must include “[a] review and effectiveness assessment of all BMPs for each area of industrial activity and associated potential pollutant sources to determine if the BMPs are properly designed, implemented, and are effective in reducing and preventing pollutants in industrial storm water discharges and authorized NSWDS.” Within 90 days of the Annual Evaluation, Section XV requires that a Facility revise their SWPPP as appropriate. Such revisions to the SWPPP are to be identified in the Annual Report. General Permit § XVI.B.3. However, the Facility’s Annual Report for the 2017-2018 reporting year failed to provide a sufficient explanation of the Facility’s failure to take steps to reduce or prevent high levels of pollutants, including but not limited to COD and zinc which were measured at levels above the annual NAL, observed in the Facility’s storm water discharges. The failure to assess the Facility’s BMPs and to report revisions to the SWPPP negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Saroyan Lumber has not proposed sufficient BMPs that properly respond to EPA benchmark and water quality standard exceedances in violation of the General Permit.

LAW puts Saroyan Lumber on notice that a failure to submit accurate and complete Annual Reports is a violation of the General Permit and the CWA. Saroyan Lumber is in ongoing violation of the General Permit every day that the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Saroyan Lumber is subject to civil penalties for all violations of the CWA occurring since August 21, 2017.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, ensuring that operators meet effluent and receiving water limitations. Section X.A-B of the General Permit requires dischargers to develop and implement a SWPPP prior to beginning

industrial activities that meet all of the requirements of the General Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. General Permit § X.C. These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. General Permit § X.B. Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. General Permit Factsheet § I(1).

Sections X.D-I of the General Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of industrial materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges. The General Permit requires that all dischargers develop and implement a set of minimum BMPs (which are mostly non-structural BMPs) as well as any advanced BMPs (which are mostly structural) as necessary to achieve BAT/BCT, which serve as the basis for compliance with the General Permit's technology-based effluent limitations. *See* General Permit § X(H). The General Permit requires a comprehensive assessment of potential pollutant sources, specific BMP descriptions; and a BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* General Permit §§ X.G.2, 4-5.

The General Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* General Permit, § X.H.1. Failure to implement all of these minimum BMPs is a violation of the General Permit. *See* General Permit Fact Sheet § I(2)(o). The General Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* General Permit, § X.H.2. Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the General Permit. *Id.* The General Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* General Permit § X.H.4-5. A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. § 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. General Permit §§ V.A, I.A.1, I.D.31-32.

Despite these clear SWPPP requirements, Saroyan Lumber has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed,

implemented, and/or revised SWPPP. The Facility's SWPPP fails to comply with the requirements of Section X(G)(2) of the General Permit. Saroyan Lumber has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP for the Facility fails to comply with the requirements of Section X(H) of the General Permit. The SWPPP fails to implement required advanced BMPs. Even if a treatment system or other available advanced BMP is not identified in the SWPPP, the SWPPP must identify the advanced BMPs that are not being used at the Facility which could address the pollutants being discharged. The facility has failed to "ensure that the SWPPP identifies and justifies each minimum BMP or applicable advanced BMP not being implemented at the facility because they do not reflect best industry practice considering technological availability and economic practicability and achievability." General Permit, § X.H.4.b.

Relatedly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, Saroyan Lumber has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

LAW puts Saroyan Lumber on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and LAW will include additional violations as information and data become available. Saroyan Lumber is subject to civil penalties for all violations of the CWA occurring since August 21, 2017.

D. Failure to Comply with General Permit Evaluation and ERA Requirements.

The General Permit requires that a Discharger compare the results of its storm water discharge samples to the adopted annual NALs and instantaneous maximum NALs. General Permit § XII.A. If sampling results for a given parameter indicate an NAL exceedance for that same parameter, the Discharger attains "Level 1 status," which commences on July 1 following the reporting year during which the exceedance occurred. General Permit § XII.C.

By October 1 following commencement of Level 1 status, the Discharger must complete a Level 1 Exceedance Response Action (ERA) Evaluation. General Permit § XII.C.1. As part of the Level 1 ERA Evaluation, the Discharger must "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances." *Id.* No later than January 1 following commencement of Level 1 status, the Discharger must submit via SMARTS a Level 1 ERA Report. General Permit § XII.C.2. The Level 1 ERA report must be prepared by a Qualified Industrial Stormwater Practitioner (QISP)

and must contain “[a] summary of the Level 1 ERA Evaluation” and “[a] detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL.” *Id.* A Discharger can move back to Baseline status from Level 1 status only when: (1) a Level 1 ERA report has been completed; (2) all identified additional BMPs have been implemented; and (3) results from four consecutive QSEs sampled after BMP implementation indicate no additional NAL exceedances for that parameter.” *Id.*

As discussed above, during the 2017-2018 Reporting Year, Saroyan Lumber exceeded the annual NALs for both zinc and COD. Due to these exceedances, Saroyan Lumber commenced Level 1 status on July 1, 2018. Per the General Permit, Saroyan Lumber was required to complete a Level 1 ERA Evaluation by October 1, 2018 and to submit a Level 1 ERA Report via SMARTS by January 1, 2019. As of the date of this notice, Saroyan Lumber has failed to submit a Level 1 ERA Report via SMARTS despite exceeding annual NALs for two parameters.

As explained in the General Permit Fact Sheet, “[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances.” General Permit Fact Sheet, p. 60. Accordingly, LAW puts Saroyan Lumber on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without conducting Level 1 ERA Evaluations and submitting via SMARTS Level 1 ERA Reports for zinc and COD. These violations are ongoing. Saroyan Lumber is subject to civil penalties for each day it has failed to submit adequate Level 1 ERA Reports for zinc and COD.

III. Persons Responsible for the Violations.

LAW puts Saroyan Lumber Co., Inc, Robert Lemke and Eddie Madrigal on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, LAW puts Saroyan Lumber Co., Inc, Robert Lemke and Eddie Madrigal on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of LAW is as follows:

Bruce Reznik, Executive Director
LA Waterkeeper
120 Broadway, Suite 105
Santa Monica, CA 90401
Tel. (310) 394-6162
bruce@lawaterkeeper.org

V. Counsel.

LAW has retained legal counsel to represent it in this matter. Please direct all communications to:

Brian B. Flynn
Michael R. Lozeau
Lozeau Drury LLP
1939 Harrison St., Suite 150
Oakland, California 94612
Tel. (510) 836-4200
brian@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Saroyan Lumber to a penalty of up to \$37,500 per day per violation for all violations occurring since December 15, 2012, up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015. In addition to civil penalties, LAW will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

LAW believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. LAW intends to file a citizen suit under Section 505(a) of the Act against Saroyan Lumber and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, LAW would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, LAW suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. LAW does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Brian B. Flynn
Lozeau Drury LLP
Attorney for Los Angeles Waterkeeper

SERVICE LIST – via certified mail

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

William Barr, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Mike Stoker, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Deborah Smith, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

ATTACHMENT A
Rain Dates, Saroyan Lumber Co., Inc., Huntington, CA

October 20, 2017
January 8, 2018
January 9, 2018
March 2, 2018
March 10, 2018
March 15, 2018
March 16, 2018
March 21, 2018
March 22, 2018
October 12, 2018
October 13, 2018
November 22, 2018
November 29, 2018
December 5, 2018
December 6, 2018
January 5, 2019
January 7, 2019
January 12, 2019
January 14, 2019
January 15, 2019
January 16, 2019
January 17, 2019
January 31, 2019
February 2, 2019
February 3, 2019
February 4, 2019
February 5, 2019
February 9, 2019
February 10, 2019
February 14, 2019
February 15, 2019
March 2, 2019
March 6, 2019